



OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)	
)	No. G2003-73
WASHINGTON STATE NURSES)	
ASSOCIATION)	NOTICE FOR REQUEST OF
)	DECLARATORY ORDER

TO:

- Louise Kaplan, ARNP
- Nancy Ellison
- Mary Oliver McWilliams
- Advantage Dental Plan, Inc.
- Aetna Health Insurance of Washington, Inc.
- Asuris Northwest Health
- Columbia United Providers
- Community Health Plan of Washington
- Dental Health Services, Inc.
- First Choice Health Plan, Inc.
- Great West Healthcare of Washington, Inc.
- Group Health Options, Inc.
- Kaiser Permanente Health
- KPS Health Plans
- Lifewise Health Plan of Washington
- Pacific Visionscare Washington, Inc.
- Pacificare of Washington, Inc.
- Premiera Blue Cross
- Providence Health Plan
- Regence Blue Shield
- Regence BlueCross BlueShield of Oregon
- United Healthcare of Washington, Inc.
- Vision Service Plan
- Washington Dental Plan
- Willamette Dental of Washington, Inc.

On June 30, 2003, the Office of Insurance Commissioner (OIC) received a Request for Hearing from the Washington State Nurses Association (WSNA). The purpose of the Request for Hearing is to contest the Commissioner's decision of April 3, 2003 not to

pursue a complaint by Louise Kaplan RN, ARNP concerning the reimbursement for services to Advanced Registered Nurse Practitioners by Regence BlueShield.

Pursuant to RCW 34.05.240 the Request for Hearing has been converted to a Petition for Declaratory Order for the Commissioner's interpretation and application of the rules and regulations pertaining to reimbursement of nurse practitioners and its parity with physicians. Specifically, RCW 48.44.290, RCW 48.44.299, and WAC 284-44-045.

Attached is the original Request for Hearing, the Notice of Hearing and Order for Declaratory Judgment.

Pursuant to RCW 34.05.240(3), this Notice of Petition for Declaratory Judgment is provided to persons to whom notice is required by law, and to any other person deemed desirable.

ENTERED at Tumwater, Washington this 10th day of November, 2003.


MARY M. COTTER
Staff Attorney, Legal Affairs

FILED

NOV 07 2003

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer



OFFICE OF
INSURANCE COMMISSIONER

Penalty of perjury
The laws of the State of
Washington that on the date listed
above, I mailed or caused delivery
of a true copy of this document to

DATED this 7th day of November 2003
at Tumwater, Washington.

Signed: Victoria Meyer

In the Matter of)

WASHINGTON STATE NURSES,
ASSOCIATION)

) NO. G2003-73

) 1) ORDER GRANTING WSNA's
) PETITION FOR DECLARATORY
) ORDER AND NOTICE TO INTERESTED
) INDIVIDUALS AND ENTITIES;
) and 2) ORDER ON BRIEFING
) SCHEDULE
)

TO: Elizabeth Ford, Chief Counsel
Washington State Nurses Association
575 Andover Park West, Suite 101
Seattle, WA 98188

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Beth Berendt, Deputy Commissioner for Rates & Forms
Carol Sureau, Deputy Commissioner for Legal Affairs
Mary M. Cotter, Staff Attorney, OIC
PO Box 40255
Olympia, WA 98504-0255

On October 22, 2003, at the mutual request of the parties, the undersigned held a second prehearing conference in this matter. The Washington State Nurses Association (WSNA) was represented by Elizabeth Ford, Chief Counsel. The Insurance Commissioner (OIC) was represented by Mary Cotter, OIC Staff Attorney. The purpose of said second prehearing conference was to consider the request of the WSNA to revise its Request for Hearing filed June 30, 2003. Briefly, WSNA advised the undersigned that at this time it wishes solely to request a declaratory ruling on RCW 48.44.290 and WAC 284-44-045, and any other applicable statutes or regulations, insofar as they relate to rates paid to Advanced Registered Nurse Practitioners (ARNPs). Thus, WSNA requested that its Request for Hearing 1) be revised to only request a declaratory order from the undersigned on this issue; and 2) because WSNA has determined only to ask the undersigned for a declaratory order, it advised that it no longer wishes the undersigned to consider ordering that Regence BlueShield retroactively reimburse ARNPs at 100% of those fees paid to physicians.

ORDER GRANTING WSNA'S PETITION FOR
DECLARATORY ORDER AND NOTICE TO
INTERESTED INDIVIDUALS AND ENTITIES, AND
ORDER ON BRIEFING SCHEDULE
ORDER NO. G 2003-73

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Based upon the above requests of WSNA, and the OIC having, during the second prehearing conference, indicated its agreement to these requests of WSNA,

IT IS HEREBY ORDERED that WSNA's Request for Hearing, filed June 30, 2003, is revised to instead be solely a Petition for a Declaratory Order concerning the applicability of RCW 48.44.290, WAC 284-44-045, and any other applicable statutes or regulations, to the rates paid to ARNPs relative to rates paid to physicians. Coincident with this revision, WSNA's request that Regence BlueShield be ordered to retroactively reimburse ARNPs at the appropriate rates is withdrawn.

FURTHER, based upon its filing by letter dated October 7, 2003, correcting its Request for Hearing insofar as it stated the current rate paid by Regence BlueShield to ARNPs is 90% of the allowable rate for physicians and the actual rate currently paid is 95%, IT IS HEREBY ORDERED that said correction is made to WSNA's Request for Hearing.

FURTHER, based upon the parties mutual agreement as evidenced by letter filed October 22, 2003, and as amended during the third prehearing conference held on this date, IT IS HEREBY ORDERED that the parties shall file their Stipulated Facts by November 10, 2003, and simultaneous briefs shall be filed by November 17, 2003. Should either party wish to file responsive briefs thereafter, they shall be filed prior to 8:30 a.m. on November 21, 2003. Oral arguments shall be presented at the duly scheduled hearing date and time on November 21, 2003. As the undersigned has advised the parties during the aforereferenced October 22, 2003 prehearing conference and again during the prehearing conference held on this date, she does not intend to allow an additional continuance of the November 21, 2003, hearing in this matter.

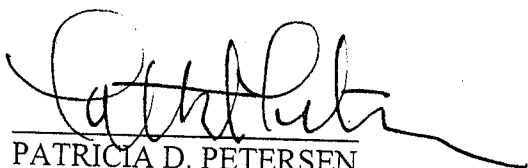
FINALLY, pursuant to RCW 34.05.240(3), IT IS HEREBY ORDERED that the OIC shall, by November 12, 2003, cause notice of this Petition for Declaratory Order to be delivered, by first class mail 1) to each health care service contractor operating in this state; 2) to Mary Oliver McWilliams, President of Regence BlueShield; 3) to Nancy Ellison, Vice President of Regence BlueShield; and 4) to Louise Kaplan, ARNP. Such notice, which shall also be posted on the OIC internet by November 12, 2003 and maintained there until a declaratory order is entered in this proceeding, shall include 1) a copy of this Order, together with 2) the original Request for Hearing filed by WSNA and 3) the Notice of Hearing entered herein which advises that the date for hearing is November 21, 2003. During the third prehearing conference held on this date, the parties agreed, and the undersigned determined, that such notice satisfies the requirements of RCW 34.05.240(3). **Pursuant to said notice, these entities and individuals are hereby notified that should they wish to be heard at the November 21, 2003, hearing in this matter, they must file a request to be heard, together**

ORDER GRANTING WSNA'S PETITION FOR
DECLARATORY ORDER AND NOTICE TO
INTERESTED INDIVIDUALS AND ENTITIES, AND
ORDER ON BRIEFING SCHEDULE
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with any documents they wish to be considered herein, with the undersigned on or before
November 20, 2003.

This Order is entered at Olympia, Washington, this 7th day of November, 2003, pursuant to
Title 34 RCW and Title 48 RCW.

A handwritten signature in black ink, appearing to read "Patricia D. Petersen", written over a horizontal line.

PATRICIA D. PETERSEN
Presiding Officer

FILED

SEP 26 2003

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

WASHINGTON



OFFICE OF

INSURANCE COMMISSIONER

STATEMENT OF MAILING

I declare under penalty of perjury
under the laws of the State of
Washington that on the date listed
below, I mailed or caused delivery
of a true copy of this document to

DATED this 26th day of September, 2003
at Tumwater, Washington.

Signed: Victoria May

In the Matter of

WASHINGTON STATE NURSES
ASSOCIATION,

No. G2003-73

NOTICE OF HEARING

TO: Elizabeth Ford, Chief Counsel
Washington State Nurses Association
575 Andover Park West, Suite 101
Seattle, WA 98188

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
Beth Berendt, Deputy Commissioner for Rates & Forms
Carol Sureau, Deputy Commissioner for Legal Affairs
Mary Cotter, Staff Attorney, Office of the Insurance Commissioner
Office of the Insurance Commissioner
P.O. Box 40255
Olympia, WA 98502-0255

On June 30, 2003, the Insurance Commissioner (Commissioner) received a Request for Hearing from the Washington State Nurses Association (WSNA). In this matter, the WSNA represents registered nurses, including advanced registered nurse practitioners (ARNP), in the state of Washington. The purpose of said Request for Hearing is to contest the Commissioner's April 3, 2003 decision not to pursue a complaint raised by Louise Kaplan, RN, ARNP, concerning reimbursement by Regence BlueShield (Regence).

Thereafter, the undersigned held a first prehearing teleconference in this matter. The Commissioner was represented by Mary M. Cotter, Staff Counsel to the Commissioner. The WSNA was represented by Elizabeth Ford, Chief Counsel. During said prehearing conference, the undersigned reviewed administrative procedure and addressed all concerns and questions of the parties. Further, the parties agreed that the hearing in this matter shall be scheduled to commence on October 9, 2003 (later changed, for good cause shown in Stipulated Motion to Continue Hearing Date, to November 21, 2003).

10/9
11/21

NOTICE OF HEARING

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The purpose of the hearing will be to determine the validity, propriety, and reasonableness of the Commissioner's aforementioned decision not to pursue the abovereferenced complaint raised by Louise Kaplan, RN, ARNP.

The hearing will be held under the legal authority and jurisdiction granted the commissioner by the Insurance Code, Title 48 RCW, and specifically RCW 48.04.010.

As stated in its Request for Hearing, the WSNA asserts that it is aggrieved by the Commissioner's failure to pursue Ms. Kaplan's complaint. Specifically, the WSNA argues, Regence's reimbursement policy allowing payment to ARNPs at a rate set at 90% of the allowable rate for physicians performing the same service is in violation of RCW 48.44.290 and WAC 284-44-045. According to the WSNA, the Commissioner apparently did reach an agreement with Regence whereby Regence agreed to revise its contract language and fee schedule methodology for any new contracts offered in 2003 and any renewed ARNP contracts in 2004 in some manner, although WSNA is unaware of the specifics. The WSNA asks that, as a remedy for this violation, the Commissioner 1) disapprove all Regence health care service contracts which set reimbursement rates for ARNPs at a percentage of the rates for physicians (i.e. at a rate which is anything less than equal to the reimbursement rates for physicians); and 2) that Regence be ordered to retroactively reimburse ARNPs at the appropriate rates.

The Commissioner's position is as indicated in its April 3, 2003, September 17, 2002, October 8, 2002 and January 3, 2003 letters which were attached to the WSNA's Request for Hearing as Exhibits A, C, D and E.

The Commissioner will be represented by Mary M. Cotter, Staff Counsel. Her mailing address is Office of Insurance Commissioner, Legal Affairs Unit, PO Box 40255, Olympia, WA 98504-0255 and her telephone number is 360/725-7057. The WSNA will be represented by Elizabeth Ford, Chief Counsel. Her mailing address is Washington State Nurses Association, 575 Andover Park West, Suite 101, Seattle, WA 98188 and her telephone number is 206/575-7979, extension 3014.

The adjudicative proceeding will be conducted pursuant to the requirements of ch. 34.05 RCW, the Administrative Procedure Act, and will be governed by the model rules of procedure, ch. 10-08 WAC. The Licensee may be represented by counsel, and may examine witnesses and fully respond and present evidence and argument on all relevant issues involved.

NOTICE OF HEARING

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Based upon a delegation of authority from the Commissioner, the undersigned will conduct the hearing and will make the final decision and enter the final order relative to this matter. Her address is Office of Insurance Commissioner, Hearings Unit, PO Box 40255, Olympia, WA 98504-0255 and her telephone number is (360) 725-7105.

As above, the undersigned has previously held a first prehearing conference in this matter. Any future questions or concerns, or requests for additional prehearing conferences, which may arise, may be directed by any party to Victoria Meyer, Administrative Assistant to the undersigned. Her address is Office of Insurance Commissioner, Hearings Unit, PO Box 40255, Olympia, WA 98504-0255 and her telephone number is (360) 725-7002.

As required by RCW 34.05.434(2)(I), you are advised that a party who fails to attend or participate in the hearing or other stage of the adjudicative proceeding may be held in default in accordance with ch. 34.05 RCW.

Pursuant to WAC 10-08-040(2)(and in accordance with ch. 2.42 RCW, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by ch. 2.42 RCW. Following this Notice is a form you may use to advise the Chief Hearing Officer of your need for an interpreter.

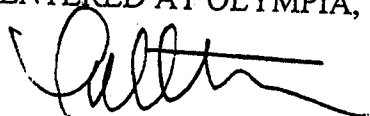
This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

ORDER

Based upon the above activity,

IT IS HEREBY ORDERED that the adjudicative hearing in this matter shall commence on November 21, 2003 at the hour of 9:00 a.m. in the Office of the Insurance Commissioner, 5000 Capitol Blvd., Insurance 5000 Bldg., Tumwater, WA, and shall continue on succeeding days if necessary, or at such other time as may be designated by the undersigned.

ENTERED AT OLYMPIA, WASHINGTON, this 26th day of September, 2003.



PATRICIA D. PETERSEN
Presiding Officer



WASHINGTON STATE NURSES ASSOCIATION
575 Andover Park West · Suite 101 · Seattle, WA 98188
Phone: 206-575-7979 · Fax: 206-575-1908

M. Collier

3014

June 23, 2003

RECEIVED
JUL 15 2003
FILED

INSURANCE COMMISSIONER
JUN 30 2003 LEGAL AFFAIRS DIVISION

Mike Kreidler
Insurance Commissioner
State of Washington
P.O. Box 40256
Olympia, WA 98504

Hearings Unit, OIC
Patricia D. Petersen
Chief Hearing Officer

Dear Commissioner Kreidler:

I represent the Washington State Nurse's Association and submit the following request for hearing before the Office of the Insurance Commissioner (OIC). The Washington State Nurse's Association represents Registered Nurses, including Advanced Registered Nurse Practitioners (ARNP) in the State of Washington.

I. Request for Hearing

On behalf of the Washington State Nurse's Association, please consider this a request for a hearing pursuant to RCW 48.40.010 regarding the OIC's April 3, 2003 decision not to pursue a complaint raised by Louise Kaplan, RN, ARNP. (Attachment A). Specifically, in that letter, the OIC failed to remedy Regence Blue Shield's (Regence) failure to provide parity in reimbursement to ARNPs and doctors performing the same service. As the representative for Registered Nurses throughout the State of Washington, the Association is deeply concerned about Regence treatment of ARNPs.

II. Factual Basis for Hearing

On July 23, 2002, Ms. Kaplan wrote a letter notifying the OIC of Regence's reimbursement policy allowing payment to ARNPs at a rate set at 90% of the allowable rate for physicians performing the same service. As Ms. Kaplan described, there was no rational basis for this distinction other than the difference in title and licensure. Ms. Kaplan requested that the OIC enforce the regulations requiring parity of reimbursement for the same health care services performed by all licensees. (Attachment B). This began the OIC's investigation into Regence's reimbursement policy.

On July 26, 2002, the OIC requested that Regence respond to the complaint within 15 days. In its September 17, 2002 response, Regence claimed that its only obligation was to provide reimbursement parity "based on license-type." Thus, because Regence pays practitioners with ARNP licenses the same fee for the same service it complies with the statute. (Attachment C).

The OIC disagreed with Regence's interpretation finding that Regence was in violation of the parity requirement. (Attachment D). The OIC relied on the legislative intent as defined in the regulation, which was to assure the people of the State access to health care services of their choice. (RCW 48.44.299). Additionally, the OIC relied on RCW 48.44.290 which provides that it is unlawful to unilaterally impose a contract provision that reduces reimbursement based on the patient's choice to obtain health services from an RN rather than a doctor.

Regence responded to the OIC by again taking the position that the law does not require identical rates of reimbursement between physicians and registered nurses. (Attachment E). Moreover, Regence argued that WAC 284-44-045 does not reference the actual reimbursement of pay to providers, but rather seeks to ensure that a member is not required to pay more out-of-pocket when receiving services from a registered nurse instead of a physician. OIC, correctly, did not alter its position.

Although we have received no documents regarding this, there were apparently continuing negotiations between OIC and Regence. In those conversations, the OIC and Regence reached an agreement. Ms. Kaplan was not included in these negotiations.

On January 3, 2002, OIC wrote to Ms. Kaplan describing the agreement reached. In that agreement, Regence agreed to revise their contract language and fee schedule methodology for any new contracts offered in 2003 and any renewed ARNP contracts in 2004. The OIC has declined to provide any specifics regarding the agreements and did not require Regence to reimburse for past services which were not paid at parity.¹

Grounds for Relief

RCW 48.44.290, provides that "benefits shall not be denied under [a health care service] contract for any health care service performed by a holder of a license for registered nursing practice or advanced registered nursing practice . . . if . . . such contract would have provided benefits if such service had been performed by [physician]." The statute goes on to explain its intent:

The legislature finds and declares that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired by prepaid agreements which provide benefits, reimbursement, or indemnity by health care service contractors . . . which do not provide parity of reimbursement among licensed health

¹ In its letter the OIC seemed to suggest that the Commission lacked the authority to remedy a violation of the parity requirement. The Association disagrees with this interpretation of the OIC's authority.

care providers performing the same health care services. It is further the intent of the legislature . . . to require parity of reimbursement for the same health care services performed by all licensees who perform such services within the scope of their respective licenses . . .

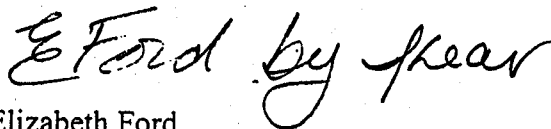
The regulations implementing this statute provide by example the meaning of this legislation. "An example of such an impermissible provision would be one which unilaterally sets the level of reimbursement for nurse-provided services at a fixed, less-than-100% percentage of the benefit which would be paid for participant-doctor-provided services, if any, or other doctor-provided services, if the contractor has no participant doctors." WAC 284-44-045

In this case, by reimbursing ARNP's at a lower rate than doctors for the same services performed, Regence has violated the statute. Regence has presented no evidence of a methodology for setting ARNP reimbursement rates differently from the rates for physicians. Indeed, the very fact of using a percentage indicates that Regence simply reimburses ARNPs at a lower rate regardless of details of the service provided.

As remedy for this violation, the WSNA requests that the OIC disapprove all Regence health care service contracts which set reimbursement rates for ARNPs at a percentage of the rates for physicians. Additionally, the WSNA requests that Regence be ordered to retroactively reimburse ARNPs at the appropriate rates.

Thank you for your attention to this important matter and we look forward to hearing from you as to the hearing date.

Sincerely,

A handwritten signature in cursive script that reads "E Ford by Jhear".

Elizabeth Ford
Chief Counsel

c: Judy Huntington
Louise Kaplan